



COMMONWEALTH of VIRGINIA

Office of the Attorney General

Richmond 23219

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MEMORANDUM

TO: **RENEE WHITE**
Regulatory Coordinator
Department of Medical Assistance Services

FROM: **USHA KODURU**
Assistant Attorney General

DATE: **June 28, 2005**

SUBJECT: **Emergency Regulation to Extend Medical Coverage to Pregnant Women-
FAMIS MOMS**

I have reviewed the attached emergency regulation that will create new state regulations and modify the State Plan for Medical Assistance Services relating to medical coverage for pregnant women who are over the age of 19 through the Family Access to Medical Insurance Security Plan and shall be known as FAMIS MOMS.

Based on that review, it is this Office's view that the Department of Medical Assistance Services (DMAS or the Department), Item 324 (L) of the 2005 Appropriations Act, has the authority to promulgate this regulation, subject to compliance with the provisions of Article 2 of the Administrative Process Act (APA) and has not exceeded that authority.

The authority for these emergency actions is found in Va. Code § 2.2-4011, which provides that an "emergency situation" includes a situation "in which Virginia statutory law, or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment..." The amendments to the regulations will enable the Director, in lieu of the Board of Medical Assistance Services, to comply with the 2005 Appropriations Act, Item 324(L). Item 324(L) states that DMAS shall "amend the Family

Access to Medical Insurance Security Plan and related regulations to expand medical coverage to pregnant women who are over the age of 19 with annual family income in excess of the Medicaid limit but less than or equal to 150 percent of the Federal Poverty Level....” The Department shall promulgate emergency regulations to implement provisions of this amendment within 280 days from the enactment date of this act.

This situation qualifies as an emergency as provided in § 2.2-4011(A)(ii) according to the language of the 2005 Appropriations Act, Item 324(L). As such, these regulations may be adopted without public comment with the prior approval of the Governor.

Accordingly, with the prior approval of the Governor, these regulations will qualify for the “emergency” exemption from Article 2 requirements. Please be advised, however, that under Va. Code § 2.2-4011(A), the Department must state in writing the nature of and necessity for such emergency action, and this appears to have been accomplished in the “Agency Background Document.” In addition, the regulations shall be effective for no more than twelve months. As the Department intends to continue regulating the subject matter governed by this emergency regulation beyond 12 months, it will be necessary to replace these emergency regulations with regulations duly promulgated under Article 2 of the APA. A Notice of Intended Regulatory Action relating to the proposed replacement regulations must be filed with the Registrar within 60 days of the effective date of the emergency regulations (and it appears that this has been done). The proposed replacement regulations must be filed with the Registrar within 180 days after the effective date of the emergency regulations.

If you have any questions or need any additional information, please feel free to contact me at 786-1840.

cc: Kim F. Piner, Esquire

Attachment